



OECD Guidelines

Specific Instance

Regarding Pulp Paper Mill Investment in Fray Bentos Uruguay by Botnia S.A.

**Presented by the Center for Human Rights and Environment (CEDHA)
Córdoba, Argentina**

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submitted to:

OECD Finlande - Finland

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Summary of Specific Instance:

The Center for Human Rights and Environment (CEDHA) is submitting a Specific Instance against Oy Metsä-Botnia, Metsäliitto, UPM-Kymmene, Kemira, and Lemcon for breaching the OECD Guidelines for Multinational Enterprises (the "Guidelines") with respect to the Orion pulp mill project (Orion) in Uruguay.

The mentioned projects are grounded on the *irresponsible business conduct and attitude* of Botnia and its partners and subcontractors and the severe consequences that this conduct is causing to regional diplomatic relations between Argentina and Uruguay. Finland, as a member of the OECD, must fulfill its duties to adhere, uphold and promote the Guidelines, which includes, take action to address actions by Botnia SA (henceforth Botnia) which result in: the violations of national, regional and international law, violations of international organization regulations regarding social and environmental protection, public tensions, and breakdown of diplomatic relations, as well as destabilization of business and social environments in Argentina and Uruguay caused directly by this project.

Already, the Botnia project has been the subject of a complaint against the government of Uruguay by stakeholder victims before the Inter American Commission on Human Rights-which has opened investigations-, a complaint before the IFC's Compliance Advisor/Ombudsman (CAO)-which has resulted in a highly critical Assessment Report and full Compliance Audit by the CAO-, a criminal complaint against company executives of Botnia (admitted by Argentine Federal Prosecutors)-which is presently also under investigation-, Equator Principle Compliance Complaint (directed to ING Group, financial supporter of the Botnia project who has since withdrawn consideration of its support to Botnia) and a Human Rights and Corporate Social Responsibility Complaint to Nordea, a Swedish based financial group supporting the Botnia project. Tellingly, the projects have, due to violations of the Uruguay River Treaty (bilateral law between Argentina and Uruguay), also triggered Argentina's decision to take Uruguay to the International Court of Justice at the Hague. Uruguay has already initiated action against Argentina for social unrest caused by opposition to construction of the Botnia pulp papermill.

While the Guidelines suggest **that multinational enterprises have an important opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives**, this project does exactly the contrary. Not only has Botnia ignored stringent environmental and social safeguards established by the World Bank, and particularly by the IFC to ensure that contaminating industries from the industrialized world do not unduly attempt to gain undue competitive advantage in the developing world by exporting contaminating industries, resulting in enormous public and environmental risk, but Botnia is also offering other companies around the world the lamentable example, of how moving to a developing country can offer enormous tax benefits, less stringent and more flexible environmental law compliance and enforcement, and enormous profit. It is important to note that the Botnia investment of over 1.2 billion dollars, happens to be Finland's largest private foreign investment ever, further magnifying this case and problem. The implication for affected communities is that this profit and benefit for Botnia and its financial partners is at the expense of the natural environment, the health of workers and nearby communities, and the local livelihoods of the impacted communities of Argentina and Uruguay. The investments and project sponsored by Botnia and the way in which the company has handled public concern and environmental and social risk, as well as the obstinate position of Botnia to ignore the Uruguayan President's request to halt construction for 90 days while a solution is reached to this problem with the Argentine president (according to Botnia's President, due to the impacts this halt would have on Botnia's stock prices in the New York and Helsinki stock exchanges), is clearly working against the basic principles and conditions for the promotion of equitable and sustainable development and is counter to the very essential and elemental principles of the OECD Guidelines for Multinational Enterprises.

This Specific Instance offers evidence, sustained largely by the World Bank's independent Compliance Advisory Ombudsman, consultants hired by the IFC, the Argentine government and independent experts, that Botnia and as a consequence, its partners, have breached the Guidelines in the following manner:

- § Violations of Guidelines' Chapter II - General Policies respective to:
 - Project's detrimental contribution to sustainable development, social and economic progress (paragraph 1), not only due to expected environmental degradation of land, soil and water which are substantiated in numerous technical documents mentioned in this Specific Instance, but also due to impacts on the livelihoods of local communities dependent on the rich environment for its tourism based industry;

- Project violation of Human Rights of affected communities, including right to health, right to life, right of access to information, right to participation, right to economic development, right to property, among others; (paragraph 2);
 - Project promotion of lax control of environmental, social and health, control and protection (paragraph 5);
 - Failure to incorporate self-regulatory practices and management systems (Chapter 2, commentary 8);
- § Violations of Guidelines' Chapter III – Disclosure Policy
- No timely, regular or reliable information about the projects, specifically relative to environmental concerns of local community (paragraph 1), this violation was confirmed by the CAO in its Assessment Report;
 - Poor or no information about project's non-financial information including on environment and social impacts (paragraph 1);
- § Violations of Guidelines' Chapter V - Environment recommendations:
- No consideration for host government's obligations under relevant international agreements, principles, objectives and standards (introduction); such was the consequence of this violation that today Argentina is taking Uruguay to the International Court of Justice precisely due to violations of international bilateral law;
 - No effort to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development (introduction); company objectives of developing one industry are at the expense of another, greater local industry;
 - Failure to collect and adequately evaluate information regarding project impact on environment, health, and safety dimensions (paragraph 1a);
 - Failure to consider foreseeable environmental, health and safety impacts (paragraph 1a, paragraph 3);
 - Failure to engage in adequate communication and consultation with affected communities (paragraph 2b), particularly with communities on the Argentine side of the sphere of influence;
 - Failure to prepare an appropriate environmental impact assessment that considers preventative measures (paragraph 3);
 - Failure to take into account the legitimate concerns of the public regarding environment, health, and economic livelihoods to be impacted by project (paragraph 3), particularly with regards to impacts to the tourism and agro-industry sectors;
 - Failure to base investment decisions on full scientific certainty regarding environmental and social impacts of project investment (paragraph 4), particularly with respect to water and air impacts;
 - Failure to develop a contingency plan to prevent and control serious environmental and health damage for project operations including relative to accidents and emergencies (paragraph 5);
 - Failure to utilize best available technology (paragraph 6);
 - Failure to prevent internal company double standards across Botnia's international operations (paragraph 6a); and
 - Failure to embark on sound environmental management (introduction, commentary 31).

Financial/Institutional Composition and Guideline Applicability

Oy Metsä-Botnia, UPM-Kymmene, and Metsäliitto

Orion's project sponsor, Botnia SA (henceforth Botnia), was incorporated in Uruguay as a joint venture by three registered multinational Finnish enterprises. The Finnish enterprises and their percentage share in Botnia SA are Oy Metsä-Botnia (82.1%), UPM-Kymmene (12.4%), and Metsäliitto (5.5%). All three are based and head-quartered in Finland.⁽¹⁾ Chapter I, Paragraph 3 of the Guidelines states explicitly that the Guidelines are addressed 'to all the entities within the multinational enterprise (parent companies and/or local entities), the Guidelines are applicable to its owners who are parent companies. (2)

¹ Ville Jaakonsalo, PROJECT ORION: Funding a Pulp Mill Investment in Uruguay, Metsä Group Financial Services Oy
² Guidelines, Preface Point 3 which states The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities).

The minority shareholder status of UPM-Kymmene and Metsäliitto does not exonerate them of their responsibility to adhere to the Guidelines. The Clarifications for Chapter I of the Guidelines make it clear that applicability of the Guidelines is not contingent on majority.

Kemira Group

Kemira is a registered Finnish chemical company subcontracted by Botnia S.A. for €60 million to provide chemicals to Orion (3), and is included in the specific instances following Chapter II, paragraph 10 which extends the guidelines to apply to subcontractors. Kemira has a direct business relationship with Botnia S.A., and will even purchase electricity from the Orion factory, such that Botnia maintains a significant scope of influence over Kemira. (4) It should be noted that Kemira is the sole chemical supplier to the Orion plant, so without Kemira the pulp mill operation and subsequent Guideline breaches would not be able to occur.

As a key subcontractor, Kamira's participation is morally, ethically and legally complicit in the violations perpetrated by Botnia.

Lemcom Ltd

The project management and civil engineering contractor of the Lemminkäinen Group, Lemcon Ltd., signed a construction management agreement with Botnia S.A. for construction of the project.(5) Lemcom is a registered Finnish company and is bound by the Guidelines as a subcontractor for a similar rational to Kemira.(6) As in the case of Kemira, CEDHA raise concerns with Lemcon's complicit participation in Guideline breaches regarding its supply chain responsibility.

Applicability of Guidelines to Finnish Companies

As a signatory to the Guidelines, the government of Finland has committed to adhere, uphold, promote Guideline compliance (7) and encourage their widest possible observance (8). The Guidelines apply to multinational companies headquartered in OECD countries operating in non-OECD countries. The Guidelines apply to the operations of multinational enterprises in all countries (9) but since Uruguay is not an OECD member the specific instance is submitted to Finland's National Contact Point.

Applicant's Interest

The submitting institution of this Specific Instance is the Center for Human Rights and Environment (CEDHA), a non-government organization based in Argentina, which aims to promote greater harmony between people and the environment, providing legal support for victims of environmental degradation. CEDHA has represented the 39,633 members of the Citizen's Environmental Assembly of Gualeguaychú, Argentina, a non-profit, non-politically aligned organization formed in 2003 with the specific purpose of giving a coordinated voice to Argentine victims affected by Orion, as well as the Governor and Vice Governor of the Province of Entre Ríos, Argentina, the Argentine province affected by Orion, in addition to several Uruguayan non-profit organizations which have also signed the CAO Complaint.

Project Nature, Location and General Background Policy and Legal Violations

The Orion project by Botnia is located in the town of Fray Bentos, Uruguay, on the Uruguay River which forms the International border between Argentina and Uruguay. This town's location is in the heart of one of Argentina's and Uruguay's most prominent tourist regions, surrounded by pristine riverside beaches, natural environment and one of the cleanest rivers in Argentina and Uruguay.

The projects involve two companies (Botnia and ENCE of Spain) which will make a combined investment of nearly US\$2 billion of foreign direct investment (FDI). Botnia's portion of the investment amounts to US\$1.2 billion, the largest single FDI in Uruguayan history, and the largest foreign private investment ever of a Finish company abroad. The combined production of Botnia and ENCE would be the world's largest production of Kraft System paper pulp, utilizing Elemental Chlorine Free technology, a second-rate technology which both European Union and World Bank best practice policy recommend should be replaced by the best technology available, which is a Total Chlorine Free process (TCF).

3 Botnia Echo, p13, 1:2005

4 OECD Guidelines for Multinational Enterprises, Chapter II, Comment 10: 'Established or direct business relationships are the major object of this recommendation.'

5 www.lemminkainen.com/news.asp?Section=1534&Item=9452

6 OECD Guidelines for Multinational Enterprises Chapter II, Point 10

7 OECD Guidelines for Multinational Enterprises, Chapter I, Point 10

8 OECD Guidelines for Multinational Enterprises, Chapter I, Point 5

9 OECD Guidelines for Multinational Enterprises, Chapter I, Comment 2

The industries will produce 1.5 million tons of pulp, utilizing 4 million tons of wood per year. The plants are sited on the Uruguay River forming the natural waterway border between Argentina and Uruguay, in the town of Fray Bentos (Uruguay) and across from Gualaguaychú, a tourist driven region of Argentina. The plants are expected to employ 3,000 workers during construction and 300 low-paying long-term wage workers in a region that is extremely rich in natural resources and heavily reliant on tourism and fisheries for local livelihoods.

The site choice and location was unfortunate and does **not respond** to a site study for the best location of a contaminating industry (10) as is mandated by Uruguayan law and by the IFC's Environmental Safeguard Policies for Category A projects (the highest environmental risk category). Botnia offers all of **one half page** to the analysis of site location, offering no information about the very severe risks related to site choice. (11) Botnia's site choice corresponded rather to Botnia's previous history and economic investments in the region, as Botnia *already* owned land and had invested in a portside facility where Botnia was already chopping eucalyptus trees into woodchips and loading product onto freight ships in Fray Bentos for shipment and processing in Europe. With industry trends favoring Total Chlorine Free technology, ozone treatment, as well as new standards (post 2001) in ECF to reduce environmental impacts of the pulp and paper industry, companies like Botnia and ENCE are starting to look south to continue operations where environmental controls are less strict and contamination more tolerated. The site was selected by Botnia despite the fact that the location was *not* suitable for cellulose production, given its location **immediately** above the potable water intake for the local community of Fray Bentos, and that its very close proximity to important tourist locations such as popular tourist beaches, would negatively impact the local tourism industry. In fact NO STUDY was done by Botnia to determine where the best site would be relative to contamination. It only looked at economic benefits of the site relative to proximity to international roads, port facilities and proximity to trees.

Botnia approached the International Finance Corporation (IFC), the branch of the World Bank that provides loans to multinational enterprises, which deemed the project a Category A project, indicating the *highest level* of environmental risk. As such, Botnia had to produce an Environmental Impact Assessment (EIA) for the Orion project, which it did, but which left out critical elements (such as an adequate site study-since it had already chosen its site), stakeholder consultations which it did not conduct in Argentina, and which failed altogether to consider host government obligations under international bilateral law (as pertains to the Uruguay River Treaty), as well as obligations under its environmental and human rights obligations. Further, the study was riddled with errors and shortsights, which the IFC later needed to correct and update, and which have to date, NOT been resolved.

Botnia's other gross but very conscious omission under its EIA has to do with the fact that Orion failed to adequately mention that its production is planned alongside (less than six kilometers away) a second **massive** cellulose production scheme sponsored by ENCE(12), a Spanish cellulose-producing company that has received fines and whose top executives have received jail sentences for violating Spanish and European laws protecting the environment and human rights, in Pontevedra. The combined production of Botnia considered along with ENCE would make this cellulose industry the **largest** in the world. Neither company offered a cumulative impact study for their environmental and social impacts. The World Bank, which has not yet approved its loan to Botnia, due to massive social mobilization and protest against the investments in Argentina, and mounting diplomatic conflict between Argentina and Uruguay, has recognized the many faults of the EIAs, and has on several occasions, suspended board vote on the project, commissioning a Cumulative Impact Study, which has yet to be concluded and which an IFC-hired consultant has already indicated, is incomplete and inconclusive on many of the concerns expressed by Argentine and Uruguayan stakeholders opposing the plants.

Botnia's EIA not only failed to take into account cumulative impacts, but since the project was formally located in Uruguay (it's sphere of influence is a circle cut exactly into halves by the Uruguay River), Botnia

10 Information available on the IFC's website from Botnia's own Assessment documents suggest in ONE PAGE that Botnia considered four sites and found Fray Bentos to be the most suitable taking into account factors such as conflicting uses and problems with residential areas. Located less than 5 kilometres from the residential town of Fray Bentos and in the sphere of influence of a major Argentine tourist destination conflicts with this assessment. Uruguay EIA, Capitulo 3, Ubicación y descripción, p2

[www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/\\$FILE/Uruguay_EIA_chapter3_Spanish.pdf](http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/$FILE/Uruguay_EIA_chapter3_Spanish.pdf)

11 see page 2 of

[http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/\\$FILE/Uruguay_EIA_chapter3_Spanish.pdf](http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/$FILE/Uruguay_EIA_chapter3_Spanish.pdf)

12 CAO Preliminary Assessment Report p7, states that 'At some point – after the release of the Orion EIA but before the release of the CMB EIA – the IFC recognized its requirement to conduct a cumulative impact study (CIS) that would take into account the possible additional impact of having two projects operate in close proximity', www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

failed to consider and consult stakeholders or take into account serious concerns of local industries (particularly tourism) on the Argentine side of the river, which are clearly within the projects sphere of influence (one complete half of the circle) and that will be equally impacted by the industry's water, air and land contamination. Following a complaint to the IFC's CAO Ombudsman submitted by nearly 40,000 Argentine stakeholders as well as concerned environmental and agricultural organizations in Uruguay (13), the CAO found that the project not only breached the World Bank's Environmental and Social Safeguards as well as its Disclosure Policy, but that it also ignored Uruguay's obligations under bilateral international law governing the border use of the Uruguay River.(14) The CAO Compliance Audit found that Botnia's original EIA was 'based on obsolete data' and 'the IFC's due diligence to satisfy itself that the EAs were complete in all material respects ... was inadequate and not in compliance with the organization's Disclosure Policy'.(15)

Since the complaint, Argentina has repeatedly approached Uruguay to discuss its serious concerns over the installation of these mills, and due to the company's and the Government's failure to address these concerns, and following Botnia's refusal to collaborate with the Argentine and Uruguayan presidents in the resolution of this conflict resulting in collapse of diplomatic relations, is now initiating action against Uruguay at the International Court of Justice due to this project's violations of the Uruguay River Treaty. Uruguay, meanwhile has already initiated its own complaint process before the International Court of Justice against Argentina for the economic instability and nearly US\$400 million in economic losses due to roadblock by Argentine's caused by Botnia's refusal to collaborate with the presidential negotiations process. Public opposition to the mills has precipitated into numerous protests and road blockages preventing construction supplies reaching the mills. The latest international road block to traffic between Argentina and Uruguay by concerned citizens, now runs for over 40 consecutive days, in addition to numerous short term blocks that occurred previous to the present sustained blockage. The road blocks were lifted when Uruguay and Argentina announced a presidential summit to negotiate a solution to the conflict. They came back immediately following Botnia's refusal to cease construction for the requested 90 day period. Uruguay claims to have lost US\$400 million to the roadblocks so far, while this Easter week, perhaps one of the most busy seasons for traffic into Uruguay, the roadblocks have reappeared. It is the tourism industry, presently and in the future with cellulose production, that will be aggravated by the eventual pollution by the mills.(16)

Specific Instance relative to Guideline Violations

§ Violations of Guidelines' General Policies respective to Chapter II :

- **Project not contributing to social and environmental progress with a view to achieving sustainable development (paragraph 1);**
- **Project violation of Human Rights of affected communities (paragraph 2);**
- **Project promotion of lax control of environmental, social and health, control and protection (paragraph 5);**
- **Failure to incorporate self-regulatory practices and management systems (Chapter 2, commentary 8)**

Relative to Legal Obligations

The first obligation of business is to obey the domestic laws of the host country. (17) As such there are two filings in local courts, both in Uruguay and in Argentina, due to violations by these projects of local and regional laws established to protect the environment and health of local communities.

A major environmental concern raised by the *Informe de la Delegación Argentina al Grupo de Trabajo de Alto Nivel* concerns the production of dioxins and furans(18), which Uruguay, via the Stockholm Convention on Persistent Organic Pollutants (POPs) has committed to reduce overall annual emissions.(19)

13 CAO Complaint to the Compliance Advisor Ombudsman
www.cedha.org.ar/en/initiatives/paper_pulp_mills/cao-complaint-letter.doc

14 CAO Preliminary Assessment Report
www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

15 CAO Audit of IFC's and MIGA's Due Diligence for two Pulp Mills in Uruguay Final Report, p22 and 1

<http://www.cao-ombudsman.org/html-english/documents/CAOInformeFinaldeAuditoriadeladiligenciaDebidaCFIOMGSPANISH.pdf>

16 For example, see local newspaper article: EL CONFLICTO CON URUGUAY: SE EXTIENDE LA PROTESTA EN ENTRE RIOS,
<http://www.clarin.com/diario/2006/02/17/elpais/p-00401.htm>

17 OECD Guidelines for Multinational Enterprises, Chapter II, Comment 2

18 *Ministerio de Relaciones Exteriores, Comercio Internacional y Culto*, Informe de la Delegación Argentina al Grupo de Trabajo de Alto Nivel Buenos Aires - 3 de febrero de 2006, p15

www.cedha.org.ar/en/initiatives/paper_pulp_mills/informe-comision-binacional-argentina-spa.pdf

19 Stockholm Convention on Persistent Organic Pollutants, Article 5, Annex C Part 1, www.pops.int/documents/convtext/convtext_en.pdf

Perhaps most worrisome is the project's ignorance of Uruguay's international obligations relative to the management and protect of the Uruguay River. Under pertinent and applicable international bilateral law (20), Argentine authorities must not only be informed of projected projects of this sort, but must receive relevant information regarding contamination so as to contribute to critical decisions about the installation of potentially harmful industries such as a pulp and papermill industry of this magnitude (the largest in the world). Not only was Argentina never contacted by project sponsors or by Uruguayan authorities, but information was withheld and continues to be withheld from Argentina in the process(21). This grave violation of the Uruguay River Treaty has led to Argentina taking steps to bring Uruguay to the International Court of Justice in the Hague, due to this investment, the first time ever a Latin American country takes a friendly neighbor to the ICJ for a dispute over imminent environmental contamination, not only setting an unfortunate and entirely avoidable precedent in the region, but pitting two otherwise friendly states against one another over an investment by a foreign company escaping more stringent environmental controls in its home soil.(22) As mentioned above, Uruguay has already initiated first stapes in its own actions against Argentina at the International Court of Justice, due to the economic impacts of protests due to the construction of the Botnia mills.

It is important to note, relative to parallel legal proceeding that the procedure contemplated by Argentina at the Hague is outside of the scope of the Guidelines and deals with a dispute between two countries, not the acts of multinational enterprises as enveloped by the Guidelines. For this reason this action is considered a parallel legal proceeding not relevant to the OECD complaint against Botnia.

Relative to Human Rights

Human Rights violations by this project are essentially rights violated by Botnia of local communities which stand to be impacted by water, soil and air contamination of the Botnia's emissions. These violations have been documented in the complaint filed to the Inter-American Commission on Human Rights (23) as well as complaints filed to ING Group of Netherlands and Nordea of Sweden (24). Specific Human Rights violations include but are not limited to:

- violation of the UN Declaration on Human Rights; (25)
- Articles 1(1), 2, 4, 5, 19, 25, 26 of the *American Convention on Human Rights* (26)
- Articles 1, 10, 11 of the *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador"* (27)
- Articles I, VII, XI of the *American Declaration of Rights and Duties of Man* (28)
- violation of International Labor Organization (ILO) Conventions;

It should be noted that the proceeding before the Inter American Commission on Human Rights is outside the scope of the Guidelines, as it deals with the responsibilities of the Government of Uruguay to prevent breaches of human rights instruments and does not involve any action against the companies themselves. In contrast, the Guidelines apply to multi-national enterprises and maintain that companies have an obligation to respect the human rights. It is for this reason that this action cannot be considered a parallel legal proceeding as this OECD complaint is against Botnia.

20 Treaty Between Uruguay and Argentina concerning the boundary constituted by the River Uruguay,

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/URY-ARG1973MB.PDF>

21 An independent assessment of failure to follow permitting procedures under the River Uruguay Treaty appears in the CAO Preliminary Assessment Report p8, 10 www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

22 For example see local press: CONFLICTO CON URUGUAY: LUEGO DE LA DECISION ARGENTINA DE RECURRIR AL TRIBUNAL DE LA HAYA El canciller de Uruguay afirma que "el diálogo con la Argentina está roto"
<http://www.clarin.com/diario/2006/01/29/elpais/p-01101.htm>

23 Submission to the Inter American Commission on Human Rights
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc

24 Equator Principle Compliance Complaint, available at http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/complaint-letter-to-ing-eng.pdf

Nordea Human Rights and Corporate Social Responsibility Compliance Complaint, available at

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-nordea-csr-eng.pdf

25 Art. 3 Right to Life; Art.17 Right to Property; Art. 19 Right to Freedom of Opinion and Expression; Art. 23 Right to Work; Art. 25 Right Standard of Living;

26 Art. 1 – Obligation to Respect Rights; Art.2 – Obligation to Adopt Internal Measures; Art. 4 – Right to Life; Art. 5 – Right to Physical Integrity; Article 19 – Rights of the Child; Art.25 – Right to Judicial Protection; Art. 26 – Progressive Realization of Economic, Social and Cultural Rights.

27 Art. 1 – Obligation to Adopt Measures, Art. 10 – Right to Health, and Art. 11 – Right to a Healthy Environment

28 Art. I – Right to Life, Liberty and Security of Person; Art. VII – Right to Protection of Mothers and Children; Art. XI – Right to Preservation of Health and Well Being

The violations listed refer to breaches of conventions, declarations and additional protocols taking the form of 'other human rights obligations of the government concerned'. (29) Chapter II Commentary refers to Universal Declaration of Human Rights (UDHR), and it is asserted that the project promotes fundamental breaches (30) to the following: Articles 1, 2, 3 and 25 (1). Other conventions that bind Uruguay and are contemplated by the Guidelines are the International Covenant on Economic, Social and Cultural Rights, of which the evidence suggests violations of Article 7 (b) 'safe and healthy working conditions, and Article 12(1) 'right to physical and mental health'. Uruguay is also a state party to the Convention on the Rights of the Child, of which Article 24, 'right to health' will be breached by Orion's operation.

Given that the Commentary to Chapter V illustrates the environmental standards contained within the Guidelines are underpinned by the principles and objectives contained in the Rio Declaration on Environment and Development in Agenda 21, including:

- § protection of the atmosphere;
- § conservation of biological diversity;
- § protection of the quality and supply of freshwater resources;
- § environmentally sound management of toxic chemicals;
- § environmentally sound management of hazardous wastes; and
- § environmentally sound management of sewerage-related issues.

Orion's operation, at the heart of pristine environmental surroundings, and over the Guaraní Aquifer, the third largest freshwater supply of the planet, is a wholesale contradiction of the spirit of Rio Convention which promotes sustainable development in an era of global climatic and ecological uncertainty.

It must also be kept in mind that the project, as its location (particularly relative to water intake, and considering its highly contaminating nature in the heart of a local community), as it will affect the health of workers, residents, and local communities, contradicts the norms established by the Uruguay Constitution intending to protect the rights of the population. Botnia did not take these facts into account in its site study.

Relative to Economic Progress

The paper mills promise economic growth and development for the locality of Fray Bentos and for Uruguay. Nonetheless the projects' own economists suggest to the contrary – that the majority of the investment will be spent on the purchase of equipment in Europe and that the pulp production will not produce significant profits for local populations or for government revenues, since they sell most of their product abroad, purchase a great portion of their capital in Europe and that they have also negotiated a 25-year tax-free zone to avoid paying local Uruguayan taxes (31). All that will remain in the country of the supposed vast investment will be small revenues for the purchase of locally purchased administrative supplies, the local expenses for construction of the plant, 300 low-wage laborers that will operate the plant, the expected losses to the local economy in the tourism and fishing industries, the illnesses of the local population following exposure to the contaminated air and water, and the strong stench of rotten eggs.

Studies done by the well known Environmental Economist, Sejenovich, suggest that the project will entail economic, social and environmental losses estimated at 1.3 billion dollars in a 25-year period.(32) Furthermore, it should be noted that ALL technological and machinery supplies for the construction of the mills come from European sources, so that a large portion of the 1.8 billion dollar total investment in these mills (1.2 billion of which is Botnia's portion) will be spent in Europe, NOT in Uruguay. For example Botnia has contracted a Finnish chemicals group Kemira, for €60 million to produce the required chemicals and will source 60% of raw materials from plantations owned by Botnia.(33)

Long term worker supply suggest that only 300 or less low paid jobs will be created for permanent operation of the mills. No information has been provided on the job loss that will occur to the many more tens of thousands of local residents of Fray Bentos and Gualeguaychú that depend on the tourism sector for employment, or on other industries, such as agro-industrial sectors (meat, poultry, fish, bees, etc.) and small

29 Chapter II, comment 4

31 Ville Jaakonsalo, PROJECT ORION: Funding a Pulp Mill Investment in Uruguay, Metsä Group Financial Services Oy, www.finpro.fi/NR/rdonlyres/C41FF27B-1081-42C6-AC35-17818C8F36B2/1337/VilleJaakonsalo1.ppt

32 Available from www.cedha.org.ar/en/initiatives/paper_pulp_mills/

33 Botnia Echo: The Customer magazine of Botnia, 1 : 2005, p16, available at www.metsa-botnia.com

scale agriculture production that will LOSE employment due to the installation of these mills, generating a net job loss for the region over the long term. Both Argentina and Uruguay have already lost hundreds of millions of dollars in the tourism industry since social protests began in mid April of 2005, yet Botnia ignores this unfortunate impact of its project and rejects participating in the 90 day cease of construction so that Argentina and Uruguay can work out a solution to the conflict.

Testimony of other communities around the world and in the region that have previously been affected by similar paper mill industries (34), has alerted the community as to the false promises of these companies which suggest that the paper mills will bring sustainable and progressive economic development, but which in fact bring little in the way of cash injections into the local economy, and result in systematic contamination, illness, cancer and even death.

Relative to Non-sustainable Development and lax control of environmental, social and health, control and protection.

One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

It is worth noting that the project does NOT satisfy the needs of the present since it is working against the interests of the vast majority of the local economy which thrives off of local tourism, let alone abstaining from compromising the ability of future generations to meet their own needs. If the mills were located in a region with no production, no tourism, or in an already contaminated urban area, one might consider Botnia's injection as bringing economic development (albeit at large environmental and human impact), however, this mega-investment in a visual/air/land/water contaminating industry, is entirely incompatible with natural environment-based tourism. The project will cause serious economic, social and environmental damage whilst providing few permanent jobs, no tax-income for the state of Uruguay, permanent and accumulating damage to the region's river system and local fish stock among other agro-industrial sectors which stand to be affected by acid rain that will be caused by atmospheric contamination. The project does not meet the paper product needs of affected victims since Botnia will export pulp to make paper solely for European and Chinese markets.(35) The ability of future generations to sustainably meet their own needs is absolutely dependent on the economic, social and environmental qualities of current generations, which the project will significantly degrade.

The *Sección Química Marina del Servicio de Hidrografía Naval* and the *Instituto Nacional del Agua*, el *Centro de Investigación y Desarrollo de Ingeniería Ambiental del INTI*, and *INIDEP* prepared a joint report providing information on the anticipated contamination of the mills, states that:

The treatment system proposed involves merely the movement of organic and biodegradable matter, permitting refractory and cumulative spillage of organic material of nutrients including nitrogen and phosphorus...

The liquid effluents by Botnia are a mix of industrial and sewage water. There is no indication or measure proposed to disinfect this spillage.

The US EPA establishes limits for DQO (Chemical Oxygen Demand) to ensure minimization of effluent discharge, including toxic organics that are not rapidly biodegradable. Yet, no such limits exist or are stipulated by Uruguayan law, while the control authority has not established any standard on DQO emissions, thereby placing the local population at great risk due to such emissions. (36)

See also Chapter V breaches for evidence concerning lax controls of environmental, social and health control and protection.

34 For example see the case of pollution and illegality for the pulp mill in Pontevedra Spain (www.apdr.info/Denresiduosenca.htm) and the deaths of black necked swans from pulp mill effluent in Chile

(http://www.biologynews.net/archives/2005/11/21/pulp_mill_devastates_swans_sanctuary_in_chile.html)

35 Botnia Echo: The Customer magazine of Botnia, 1 : 2005, available at www.metsa-botnia.com

36 GTAN/DA/17/3-11-05 *Grupo Técnico Alto Nivel – Delegación Argentina*

Consideraciones sobre propuestas de emisiones de efluentes líquidos a descargar al Río Uruguay y afectación a la calidad del recurso - Fuente: Lic. Lucio Janiot, Jefe de la Sección Química Marina del Servicio de Hidrografía Naval; Ing. José Lobos, Instituto Nacional del Agua; Ing. Luis de Tullio, Centro de Investigación y Desarrollo de Ingeniería Ambiental del INTI; Lic. Alberto Espinach, INIDEP - 23 páginas.

Failure to incorporate self-regulatory practices and management systems

Self regulatory practices and management systems for the project are almost non-existent. Orion lacks fully developed environmental action plans and emergency response plans in the event of industrial mishaps, not uncommon in KRAFT mills, and as such, a relationship of confidence in the societies in which the project operates has not been established. Botnia's Environmental Impact Statement suggests safety procedures and emergency plans will be in effect by the operational date (37), but the fact remains that the EIA does not include adverse environmental impacts created by emergency situations in its Environment Action Plans (38), nor Project Specific Major Hazard Assessment in the case for use and for storing, handling and processing of dangerous chemicals (39), both of which are 'fundamental' for decision makers for decision makers to evaluate an enterprises ability to respond to emergency situations when considering project approval. (40)

Turning to the consideration of stakeholders in Botnia's operations (41), the People's Assembly of Gualaguaychú, the largest and most important stakeholder group (42) who have had their faith and trust in the EIA procedure shattered on the more than one occasion after continually denied meeting with the IFC. The IFC failed to show even after the IFC themselves had organized consultation. (43) Even in the case where self regulatory practices exist for social and environmental assessment, they have not been complied with. (44)

Violations of Guidelines' Chapter III Disclosure Policy:

- **No timely, regular or reliable information about the projects, specifically relative to environmental concerns of local community (paragraph 1);**
- **Poor or no information about project's non-financial information including on environment and social impacts (paragraph 2);**

Project sponsors have not undertaken adequate nor timely communication and consultation with the communities directly affected by environmental policies.(45) An obvious example is the failure to consult and adequately address the concerns the People's Assembly of Gualaguaychú, thus excluding input to terms of reference of all EIA documents and failure to take into account stakeholder concerns. (46)

The IFC, which is considering financing to Botnia, albeit which has now suspended its financing decision pending results on the new cumulative impact study, has had to address Botnia's failure to do a proper consultation, and has in consequence, launched a new consultation process which is not showing favorable results to these projects. Stakeholder in Argentina have lost confidence in the failed, incomplete, biased and non-transparent consultation process, which has from the beginning and with Botnia's involvement failed to respect the IFC's own disclosure policy. This was also the opinion of the CAO, which strongly criticized project sponsors and the IFC for not complying with this policy.

Paragraph 12 of IFC Environmental Assessment Policy 4.01 expands on sound environmental practices that project sponsor are obliged to undertake when engaging stakeholders in the consultation process.

37 Botnia Environmental Impact Assessment Summary, 2004/14001/1/01177, p80 referring to safety procedures

38 IFC Environmental and Social Review Procedure, December 1998, Guidance note C

39 IFC Environmental and Social Review Procedure, December 1998, Guidance note E

40 IFC Environmental and Social Review Procedure, December 1998, Guidance note C, paragraph (1e)

41 OECD Guidelines for Multinational Enterprises, Chapter II, Comment 3

42 The people's assembly of Gualaguaychú is a non-profit, non-political organization specifically created from concern about the effects of the projects. The group officially represents 39 633 residents, not to mention the countless who were unable to sign due to incapacity, or other reasons. Website: www.noalapapelera.com.ar

43 Letter from CEDHA on behalf of the Asamblea to the IFC

44 IFC Operational Policy 4.01 and IFC Operational Policy 7.5 have been repeatedly violated: see CEDHA Comment to the CIS (www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-cis-violaciones-procesos-cfi-eng.pdf) which relies heavily on findings of the CAO Preliminary Assessment Report . Botnia's environmental policy has also been violated, such as the commitment to use of best available technology and to handle environmental issues openly in cooperation with ... the general public and the authorities.' See: www.metsabotnia.com/en/default.asp?path=204.215.263

45 OECD Guidelines, Chapter V, paragraph 2b

46 Letter to World Bank President: Comments to Consultation Process and Cumulative Impact Study; Follow-up to Failed IFC Meeting with the Assembly of Gualaguaychú on Cellulose Case (Botnia/ENCE-Uruguay)

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/letter-cedha-ifc-feb-2006-final.pdf

One of the most blaring violations of consultation policy was the failure of project sponsors to consult with affected communities before designing EIAs, which is mandated by IFC's policy regarding Category A Projects (the most contaminating projects). According to IFC policy,

“For Category A projects, the project sponsor consults these groups at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized, and (b) once a draft EA report is prepared.” (47)

As is clear from the IFC Environmental Assessment Operation Policy, EAs are to be conducted, **prior to** investment to establish project ‘soundness’, which is arrived at by ‘focusing on economic, financial, technical, legal, environmental and social issues during the project appraisal process.’ (48) Naturally, IFC environmental and social policies are ‘**fundamental** to project appraisal, supervision and approval process’. Stakeholder consultation **prior to the execution of impact studies**, is also, by nature and logical order, *critical* to ensure that assessment, appraisal, and project preparation are informed, focused and pertinent to the nature of local concerns that may exist regarding project impact to local livelihood, health, and the environment of impacted communities. These fundamentals as well as order and logic of procedure are key dimensions of IFC procedure on EAs and are protected by international norms and by IFC environmental and social safeguard policies. Finally, since these are Category A projects, special attention and extra rigor is needed to ensure that these highly sensitive projects that “are likely to have significant adverse environmental impacts” are properly designed to minimize adverse affects.

Violations to the Guidelines stakeholder consultation requirements are some of the most glaring concerning violations, as they have limited and hindered the freedom of expression and critical participation of the most concerned stakeholders, many of the groups, communities, institutions, and individuals which are now actively opposing these projects. These violations included withholding of information that should have been made available to interested parties; misrepresenting the opinions and concerns of stakeholder communities in reports to the IFC and Board of Directors (Botnia suggested that there was “wide public support”, when in fact there is wide public **opposition** to the paper mills); the blatant failure to consult with stakeholders in project-affected areas of Argentina; and a glaring omission of consultations with the Assembly of Gualaguaychú. Formed in 2003, the Assembly is a 40,000 strong organization formed with the specific, non-political goal of preventing damage to the region's tourist driven economy, maintaining a pristine environment and ensuring the health and safety of the locale's residents. It is a legitimate stakeholder group with genuine concerns about victims affected within the projects' area of influence. The assembly was not consulted before the EA terms of reference were finalized, and as yet have not been consulted since the draft CIS has been prepared. Finally the project has shown no adherence to the rules of group consultation 12(a), (b) of the IFC Policy above.

Violations of Guidelines' Chapter V Environment recommendations:

- **No consideration for host government's obligations under relevant international agreements, principles, objectives and standards (introduction);** *(already cited under General Policy violations above)*
- **No effort to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development (introduction);** *(already cited under General Policy violations above)*
- **Failure to collect and adequately evaluate information regarding project impact on environment, health, and safety dimensions (paragraph 1a);**
- **Failure to take into account, the legitimate concerns of the public regarding environment, health, and economic livelihoods to be impacted by project (paragraph 3);**
- **Failure to engage in adequate communication and consultation with affected communities (paragraph 2b);** *(already cited under Disclosure Policy violations above)*
- **Failure to prepare an appropriate environmental impact assessment that considers preventative measures (paragraph 3).**
- **Failure to base investment decisions on full scientific certainty regarding environmental and social impacts of project investment (paragraph 4);**
- **Failure to develop a contingency plan to prevent and control serious environmental and health damage for project operations including relative to accidents and emergencies (paragraph 5);**

47 IFC Operational Policy 4.01

48 IFC Environmental & Social Review Procedure, para 3, p1

- **Failure to utilize best available technology (paragraph 6);**
- **Failure to prevent double standards pertaining to international operations (paragraph 6a, commentary 40);**
- **Failure to consider foreseeable environmental, health and safety impacts paragraph 3); and**
- **Failure to embark on sound environmental management (introduction, commentary 31).**

Relative to failure to collect and adequately evaluate information regarding project impact on environment, health, and safety dimensions

It is clear from the project history and evolution in design and implementation, that Botnia took advantage of lands and woodchip processing facilities and its existing port at the preexisting plant location, to transfer contaminating technologies south, where environmental controls are less strict and where they are more able to utilize ECF technology, as opposed to Total Chlorine Free technology. It is also clear that in doing so, site location would be a critical issue, especially considering that highly contaminating industries must be placed far from communities and in places where existing local industries will not be adversely affected.

One half page is devoted to siting issues in Chapter 3 of the Orion EIA which fails to discuss the siting issues relative to the expected impacts of the mill on tourism and local communities.⁽⁴⁹⁾ The insufficient analysis only considers the benefits to Botnia of locating the plants at the present site, specifically its proximity to port facilities, to international road, and to wood supply. Botnia says nothing of siting relative to contamination. It can be said that Botnia knowingly ignored difficult siting questions in its EIAs, and knowingly left many local stakeholders outside of its consultation process. Additionally, Botnia failed to consider the impacts its contamination would have on the most important and most obvious industry in the region, which is tourism. This has been one of the main criticisms of the CAO.⁽⁵⁰⁾ For this reason, Botnia failed to conduct necessary and complete impact studies, failed to consider issues such as the growing adverse impact Eucalyptus tree plantations are having on subterranean water resources, leaving small farmers without water for local crops—such as in the community of Mercedes Uruguay, where due to growing eucalyptus tree farming already existing smaller-scale pulp and paper mills, local farmers have been left without subterranean waters. Additionally air quality and water impacts to the Uruguay River will also directly affect local tourism by contaminating beaches, creating awful rotten egg smell, polluting river waters, washing up algae on the beaches, and offering a terrible skyline of industrial smoke to tourist visitors to the pristine beaches of Gualaguaychú and Fray Bentos, all hardly conducive to promote tourism. The arrival of Botnia, and the combined production with ENCE, would make this initiative the largest pulp paper production scheme in the world. If water, land and air quality problems already exist with much smaller scale production, in places like Mercedes, only 40 kilometers away from Fray Bentos, we can only expect much worse with the added production of the Botnia plant.

Finally, relative to public potable water supply, which is taken less than 5 kilometers away “downstream” from the Botnia plant site as well as worker safety considerations are also knowingly and willfully ignored by Botnia in its project design, preparation and implementation.

Relative to taking into account the legitimate concerns of the public regarding environment, health, and economic livelihoods to be impacted by project.

The World Bank’s CAO (controlling the IFC) recognizes the “legitimate voice” of local stakeholders, and although Botnia knew of growing and massive opposition to its investment immediately across the river in the Argentine community of Gualaguaychú, it knowingly and willfully chose to ignore the voice of an entire community and region, legitimately concerned with the potential environmental and health impacts of what is already globally recognized to be a contaminating industry to the health and livelihoods of local communities. Public concern centered not only around health and environmental impacts of what will be the world’s largest cellulose production, but also expressed concern over the economic livelihood of local residents who are dependent on the region’s pristine environmental conditions (air, land and water) to attract

⁴⁹ . Uruguay EIA, Capítulo 3, Ubicación y descripción, p2

[www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/\\$FILE/Uruguay_EIA_chapter3_Spanish.pdf](http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/$FILE/Uruguay_EIA_chapter3_Spanish.pdf)

⁵⁰ CAO Preliminary Assessment Report p9, http://www.cao-ombudsman.org/html/english/documents/preliminary_assessmentFINAL.pdf

the large number of tourists that visit the region each year to swim in the river, fish, rest on the riverside and utilize local environmental resources.

One example of the enormous extent of stakeholder opposition was clearly illustrated when over 50 000 concerned residents blocked the international bridge between Uruguay and Argentina protesting against the installation of the projects.(51) These residents legitimately concerned about the adverse affects of the projects have been marginalized and ignored by the environmental impact process. More recent protest included the blocking of three international bridges (the only bridges) united Uruguay and Argentina. The last road block lasted for over 40 consecutive days. Finally roadblocks were removed following the presidential initiative to initiate a negotiations process, which pended on Botnia ceasing construction for 90 days. However the roadblocks returned recently fowling Botnia's refusal to heed the request due to (in the word's of its president), falling stock prices in NY and Helsinki.

The high temperatures of the paper production processes will cause the **production of dioxins. Dioxins are extremely toxic**, persistent and carcinogenic and exposure to minute quantities can have the effects set out below. The known effects of dioxins on fish and mammals are wide-ranging and they are suspected of causing miscarriages, birth defects, liver damage, skin complaints and behavioral and neurological problems in humans. Certain of the substances to be discharged in waste water, are soluble so that they accumulate in the tissues of living creatures and pass through the food chain including through bio-concentration in fish.(52) They are known to have effects on the nervous system as well as on immunological and reproductive functions, and are carcinogenic.(53)

It should be further noted that as stated by the Environmental Cooperation Commission, dioxins and furans, present and emitted in pulp paper production, increase the likelihood and have been shown to cause cancer.(54) The report concludes that: (a) ... prenatal exposure to dioxins, furans and BPC have been associated to a variety of immunological complications, and in the neurological development of newborns, increasing chances of adverse health problems (diabetes, cancer) as well as impacts to workers exposed to high levels of TCCD [dioxins] and other chemical industrial substances...". This has been further verified as stated in the North American Plan of Action on Dioxins and Furans,(55) and by the Report of the Commission of Environmental Cooperation (CCAAN).

Pulp Mill bi-products also have a negative effect on the endocrine system of local fish populations. (56)

Relative to failure to base investment decisions on full scientific certainty regarding environmental and social impacts of project investment and to consider appropriate and available evidence.

Botnia's EIA was observed by the Uruguayan Environmental Ministry as not having resolved basic questions of excess contamination limits on many fronts, yet no adequate response was ever given by Botnia as to how these excesses would be addressed. Further, on issues such as subterranean water supplies, already mentioned above, Botnia is aware that eucalyptus tree plantations place undue pressure and risk on subterranean waters, something recognized by the Draft IFC Cumulative Impact Study (CIS) Annex B on Plantations. The CIS concludes that not enough information is available to know for certain if such impacts will exist (57) and hence, writes off this risk as uncertain. This oversight of Botnia might not be so severe if no information were available on present conditions, however, Botnia is aware, as is the IFC, and the general public, that the growing eucalyptus industry is already showing strains on subterranean aquifers in the immediate area, as local farmers in Mercedes Uruguay have already run out of water for local crops due to Eucalyptus plantations nearby. Botnia will aggravate this situation.

51 www.uruguay.indymedia.org/news/2005/05/34367.php

52 www.foe.co.uk/resource/briefings/consequence_pulp_paper.html

53 Medio Ambiente Y Calidad De Vida, Volume 2 No. 13, Jan-Abril 2005, Biblioteca Del Congreso Nacional, Departamento De Estudios, Extensión Y Publicaciones, Unidad De Extensión Y Publicaciones

54 Expediente de nominación sobre dioxinas y furanos Presentado por Canadá al Grupo de Trabajo sobre Manejo Adecuado de Sustancias Químicas

55 Publicado por la Commission for Environmental Cooperation of North America 393, rue St-Jacques Ouest, bureau 200, Montréal (Québec) Canada H2Y 1N9. http://www.cec.org/files/pdf/POLLUTANTS/dioxins_es.pdf

56 Environment Canada Study, www.ec.gc.ca/eds/fact/broch_e.htm#title3

57 Annex B Plantations. Pg. 12. of IFC Cumulative Impact Study;

[http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_PulpMills_AnnexB,\\$FILE/CIS_AnnexB_plantations.pdf](http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_PulpMills_AnnexB,$FILE/CIS_AnnexB_plantations.pdf)

Relative to the Failure to develop a contingency plan to prevent and control serious environmental and health damage for project operations including relative to accidents and emergencies

The World Bank as well as the appropriate Uruguayan state agency has pointed out the failure of the project sponsor (Botnia) to develop a contingency plan to prevent serious environmental harm. The project has also ignored security risks relative to potential accidents (which are common in the cellulose industry). Nor has the project sponsor provided for an environmental fund to offset expected harms. (58)

Relative to failure to utilize best available technology.

Despite Botnia's claim to the contrary, the project is NOT designed with best available technology, since it is using Element Chlorine Free (ECF) technology, which is a "second-tier technology" which is not the best available technology with regards to the use of chlorine and persistent organic pollutants, and goes against the World Bank's recommend use of Total Chlorine Free (TCF) technology in closed circuit systems and the use of ozone in processing, instead of chlorine.(59) Further, the IFC's own hired Canadian consultant concluded in his report presented on March 27th, 2006, to the IFC on the Cumulative Impact Studies that "there is a lack of supporting information in their documents to show that the mills would actually use BAT in all aspects of their designs and operations".(60)

Failure to Prevent Double Standards

Chapter V of the Guidelines requires world-wide environmental standards for multinational enterprises to prevent the incorporation of double standards, resulting in the exportation of polluting manufacturing process to nations with lower environmental standards, motivated primarily by cost. (61) Project sponsor Botnia S.A. promotes double standards with its decision to use Elemental Chlorine Free (ECF) technology in the Orion mill. ECF is a cheaper(62), second-tier (63) form of technology that results in greater contaminant discharges and more severe environmental and health effects. (64)

Operational since 1996, Oy-Metsa Botnia's Rauma pulp mill in Finland is the only mill commissioned by Oy-Metsa Botnia in the last 20 years. Unlike the Orion project, Oy-Metsa Botnia's newest pulp mill uses the higher standard TCF technology (65) recommended by the World Bank's Pollution Prevention and Control Handbook. Chapter V Commentary stipulates that where host countries do not have the regulatory framework established to ensure an equal level of environmental performance, the multinational enterprise must still adhere to the highest operating environmental standard within the company. (66) In this sense double standards refer to the transboundary operations of the enterprise, not to the difference in standards imposed by host countries. Subsequently, Oy-Metsa Botnia, as a self-proclaimed leader in environmentally friendly pulp mill technology is obliged by the Guidelines to raise overall performance, applying the best available technology it uses in its Rauma Mill in Uruguay.

Failure to consider foreseeable environmental, health and safety impacts

The decision-making process, largely connected with environmental assessment, has categorically failed to appropriately and adequately address foreseeable environmental, health and safety impacts associated with the processes of the enterprise. (67) An EIA has been prepared for Orion, yet it fails to take into account legitimate evidence which exists in the form of studies undertaken by the Argentine Foreign Ministry (68), the respected environmental economist Sejenovich (69), Cordoba National University (70), and the High

58 Botnia Environmental Impact Assessment

http://www.ifc.org/ifcext/lac.nsf/Content/Uruguay_PulpMills_Background_Docs

59 World Bank Pollution Prevention and Abatement Handbook, Pulp and Paper Mills

60 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/uruguay-experts-report-eng.pdf, page 2

61 OECD Guidelines for Multinational Enterprises, Chapter V, Paragraph 6a

62 McGinn, AP, *Why Poison Ourselves? A Precautionary Approach*

to Synthetic Chemicals, World Watch Paper 153, November 2000, p27.

www.usgbc.org/Docs/LEED_tsac/PVC/CMPBS%20Rebuttal%20Attach%202%20Worldwatch.pdf

63 As above, p26

64 As above, p26

65 www.metsabotnia.com/en/default.asp?path=204,208,234

66 OECD Guidelines for Multinational Enterprises, Chapter V, Commentary 40

67 OECD Guidelines for Multinational Enterprises, Chapter V, Point 3

68 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/analisis-ministerio-exterior-spa.pdf

69 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/sejenovich-report-spa.zip

Level Technical Group of the Binational Commission (71), which all depict alternative conclusions, suggesting acute damage to the factors that form the triple bottom line for EIA.

Despite the recognition of prestigious institutions such as the EPA, BC Cancer Agency etc, as regards health implications of Kraft technology used in the paper industry, which will be employed by these mills, the CIS does not examine the impact on human health and safety' such as cancer (72), neurological deficits (73), depression or suicide (74) caused by Kraft pulp mills.

Failure to embark on sound environmental management

It follows that sound environmental management has not taken place. Instead of improving environmental performance, Botnia S.A. is reverting to less-than-advisable, outdated, second-tier technology to help enhance profits in a developing country with less stringent environmental safeguards. Botnia S.A.'s environmental management system has not ensured that appropriate attention is given to important environmental issues.

Commentary to Chapter V stipulates that 'sound environmental management' be interpreted in its broadest sense, and applying this sentiment, it is clear project sponsors fails its environment management obligations with respect to its direct and indirect environmental impacts over the long-term.

Failure to consider preventative measures

In light of the obvious threat of serious damage to the environment and human health and safety, project sponsors have failed to investigate cost-effective measures to prevent or minimize damage. Furthermore, the Guidelines espouse that the lack of full scientific certainty (as is propagated by the flawed and policy non-compliant CIS) is not a reason for postponing decisions to mitigate environmental damage. (75) Additionally, in complete contravention of IFC policy the CIS does not take into account the no-project situation nor adequately consider effects on competing industries. (76)

Other Considerations

Relative to Bribery Allegations

While a final judicial verdict has not been reached on allegations of bribes taken to approve installation permits to the project sponsors, it should be brought to the attention of the National Contact Point that an Argentine prosecutor handling the criminal complaint brought against Botnia executives, suggests that an Uruguayan official may be involved in illicit handling of project permits. An open Uruguayan civil suit filing now being handled by a Uruguayan Prosecutor, is also grounded on such claims. (77) If so, the project may eventually be implicated in Guideline violations pertaining to the offering of improper financial incentives and it will be open to the applicant to submit an addendum to the specific instance.

Further, a recent national television broadcast was offered by Channel 9 in Argentina, showing Botnia's Director in Uruguay, Carlos Faroppa in a conversation, allegedly with an Uruguayan environmentalist Marcel Cayrus, from Fray Bentos, who brought the claim to Channel 9, discussing an alleged payment of 60,000 pesos each to two environmentalists (including himself) by Faroppa of Botnia to subdue protests against the installation of the plants in Fray Bentos. Botnia has rejected these allegations

70 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/informe-papelera-unc-cordoba-spa.doc

71 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/informe-comision-binacional-argentina-spa.pdf

72 BC Cancer Agency, Study Shows High Cancer Risk for Pulp Mill Workers, www.bcen.bc.ca/bcerart/Vol7/studysho.htm

73 Negative Health Effects of Malodours in the Environment, A Brief Review from the Journal of Neurology, Orthopaedic Medicine and Surgery (1998).

74 www.medicalnewstoday.com/medicalnews.php?newsid=33330

75 OECD Guidelines for Multinational Enterprises, Chapter V, Point 4

76 IFC Environment Assessment Policy 4.01, paragraph 6

77 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-uruguay-viana.pdf

Relative to Moral, Social and Legal Obligations: Universal Declaration of Human Rights

The Guidelines source norms and standards from international instruments. The Guidelines are subsequently ensconced by international law, the violation of certain instruments consisting of a direct violation of the Guidelines.

The commentary of the Guidelines (78) refers to the 1948 Universal Declaration of Human Rights which state that “every individual and every organ of society ... promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance”.

The companies listed in the specific instances are organs of society, and are obliged to promote respect for these rights and freedoms. The National Contact Point also must seriously consider its legal obligations (as an arm of the Finnish state) to embark on progressive international measures by which universal human rights are to be effectively recognized and observed.(79) We have already mentioned above concerns over company violations of several Articles of the UN Declaration, including Art. 3 Right to Life; Art.17 Right to Property; Art. 19 Right to Freedom of Opinion and Expression; Art. 23 Right to Work; Art. 25 Right to a Standard of Living.

Relative to the Uruguay Constitution

Taking into account all available evidence, the project is at serious risk of violate norms incorporated the Uruguayan Constitution, namely Article 44 ‘right to health’, Article 47 1(b) that establishes the necessity of sustainable development especially pertaining to the waterways, whilst guaranteeing the involvement of civil society and the public in decision-making processes; and Article 47 1(d) prioritizing the supply of potable water over other factors such as economic development. (80)

Relative to Project Funding

Oy-Metsa Botnia will receive 60% of its funding for the entire project from shareholders within the Botnia S.A. conglomerate, and as a result Guideline compliance is one of the few ways to affect directly affect corporate behaviour of Finnish Companies in the global south. Other financiers, such as ING Group, BBVA and Nordea have been made aware of IFC Policy breaches and violations to international law yet have done little to appease the situation despite the positive rhetoric emanating from so called commitments to Equator Principles, Human Rights and various other environmental instruments pertaining to United Nations and corporate social responsibility initiatives. (81)

Parallel Legal Proceedings

The applicants have stated the reasons why the submission before the Inter American Commission on Human Rights and the planned case before the International Court of Justice at the Hague are outside the scope of the Guidelines and their purposes. Furthermore, the Finnish NCP should be aware of the Dutch NCP’s stance whereby parallel legal proceedings will not be a reason to reject a specific instance.(82)

Pullout of ING Group on Intention to Invest US\$480 million in Botnia

On April 12th, and following an Equator Principles Compliance Complaint file by CEDHA in December of 2005, and mounting social, political, economic and diplomatic tensions, ING Group of the Netherlands, which as considering financial support to Botnia in the amount of US\$480 million, responsibly decided to withdraw its support to Botnia. (83)

78 Chapter II Commentary, paragraph 4: ‘The Universal Declaration of Human Rights and other human rights obligations are particular relevance in this regard.’

79 The manner and extent of human rights abuses are detailed below

80 Available at <http://www.georgetown.edu/pdba/Constitutions/Uruguay/uruguay04.html>

81 www.cedha.org.ar/en/initiatives/paper_pulp_mills/

82 Communication with OECD Watch

83 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/ing-pullout-letter-april-12-2006.pdf

Conclusion

It is clear from the available evidence, from reports of the World Bank's CAO, from diplomatic complaint action by Argentina against Uruguay for violations to the Uruguay River Treaty as well as from the massive public uprising that have resulted from Botnia's investment, as well as ING Group's withdrawal from considering a US\$480 million loan to Botnia, that Botnia's project is riddled with problems, inconsistencies, violations of IFC policy, World Bank best practice and international law. It is the source of large public concern and opposition and is resulting in worrisome and escalating social, economic, and diplomatic tension.

Given that the IFC has not yet concluded its decision on whether or not to finance this project, and that the project consideration has halted due to these evident problems. And considering Botnia's self-interested and profit driven decision to ignore the presidential request to halt construction for 90 days, which collapsed negotiations between Argentina and Uruguay to resolve the international conflict caused by Botnia's project and considering that this situation and Botnia's attitude and decision go contrary to the basic principles established in the OECD Guidelines; **we call not only for a review by the Finnish OECD NCP of this project and of the responsibility of the project sponsor, but also for the NCP to intervene in order to call attention to the many problems and inconsistencies that this project posits in relation to the OECD Guidelines for Multinational Enterprises.** It is precisely these types of inconsistencies and problems, violations of rights and actions contrary to responsible and sustainable investment, as well as the self-interested attitude of Botnia, which the Guidelines are designed to avoid and Finland has committed to uphold.

Following the Procedural Guidance on Implementation of Specific Instances, which requires an initial assessment by the National Contact Point of whether the issues raised merit further examination and respond to the party or parties raising them in an efficient and timely manner, we request a written response indicating how the National Contact Point (NCP) intends to proceed. Please address this correspondence to the Center for Human Rights and Environment, Av General Paz 186 – 10 A, Córdoba 5000, Argentina or by email.

Sincerely,

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Appendix

CAO Complaint to the Compliance Advisor Ombudsman
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/cao-complaint-letter.doc

Submission to the Inter American Commission on Human Rights
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc

CAO Preliminary Assessment Report
http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

Investor Briefing Kit on Botnia and ENCE Pulp Mills in Uruguay
<http://www.cedha.org.ar/docs/press-kit-celulosa-eng.pdf>

Sejenovich Report
www.cedha.org.ar/en/initiatives/paper_pulp_mills/

IFC Operational Policy 4.01

IFC Operational Policy 7.50

World Bank Pollution Prevention and Control Handbook

CEDHA, Comment on the Cumulative Impact Study (CIS)
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-cis-violaciones-procesos-cfi-eng.pdf

Ministerio de Relaciones Exteriores, Comercio Internacional y Culto: ANÁLISIS Y OBSERVACIONES AL BORRADOR DE ESTUDIO DE IMPACTO ACUMULADO DE LA CORPORACIÓN FINANCIERA INTERNACIONAL, 16 DE ENERO DE 2006

University of Cordoba Report: Facultad de Ciencias Exactas, Físicas y Naturales
Universidad Nacional de Córdoba, INFORME PRELIMINAR
PAPELERAS SOBRE EL RÍO URUGUAY

GTAN/DA/17/3-11-05 *Grupo Técnico Alto Nivel – Delegación Argentina*
Consideraciones sobre propuestas de emisiones de efluentes líquidos a descargar al Río Uruguay y afectación a la calidad del recurso - Fuente: Lic. Lucio Janiot, Jefe de la Sección Química Marina del Servicio de Hidrografía Naval; Ing. José Lobos, Instituto Nacional del Agua; Ing. Luis de Tullio, Centro de Investigación y Desarrollo de Ingeniería Ambiental del INTI; Lic. Alberto Espinach, INIDEP - 23 páginas

Ministerio de Relaciones Exteriores, Comercio Internacional y Culto
Informe de la Delegación Argentina al Grupo de Trabajo de Alto Nivel
Buenos Aires - 3 de febrero de 2006

Equator Principle Compliance Complaint – ING Group
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/complaint-letter-to-ing-eng.pdf

Equator Principle Compliance Complaint – BBVA
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/complaint-letter-to-bbva-eng.doc

Nordea Human Rights and Corporate Social Responsibility Compliance Complaint
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-nordea-csr-eng.pdf

Draft Cumulative Impact Statement
http://www.ifc.org/ifcext/lac.nsf/Content/Uruguay_Pulp_Mills_CIS

Letter to World Bank President: Comments to Consultation Process and Cumulative Impact Study; Follow-up to Failed IFC Meeting with the Assembly of Gualeguaychú on Cellulose Case (Botnia/ENCE-Uruguay)
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/letter-cedha-ifc-feb-2006-final.pdf

Botnia Environmental Impact Assessment Summary
http://www.ifc.org/ifcext/lac.nsf/Content/Uruguay_PulpMills_Background_Docs

The OECD Guidelines for Multinational Enterprises and Supply Chain Responsibility: A Discussion paper, December 2004

www.oecdwatch.org/docs/OW%20Supply%20Chain%20Discussion%20paper.pdf

TUAC trade union advisory committee to the OECD organisation for economic cooperation and development: TUAC Survey of the functioning of OECD Multinational Guidelines National Contact Points

www.union-network.org/unimultinationals.nsf/0/98bdbef03c0cbb9cc1256a6a00530f50?OpenDocument

The OECD Guidelines for Multinational Enterprises: First Annual Meeting of the National Contact Points SUMMARY REPORT OF THE CHAIR OF THE MEETING ON THE ACTIVITIES OF NATIONAL CONTACT POINTS

www.oecd.org/dataoecd/62/58/2438852.pdf

OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits

<http://www.oecd.org/dataoecd/26/33/21684464.pdf>

Ville Jaakonsalo, PROJECT ORION: Funding a Pulp Mill Investment in Uruguay, Metsä Group Financial Services Oy

www.finpro.fi/NR/rdonlyres/C41FF27B-1081-42C6-AC35-17818C8F36B2/1337/VilleJaakonsalo1.ppt

Treaty Between Uruguay and Argentina concerning the boundary constituted by the River Uruguay,

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/URY-ARG1973MB.PDF>

American Convention on Human Rights

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador"

American Declaration of Rights and Duties of Man

Sección Química Marina del Servicio de Hidrografía Naval and the Instituto Nacional del Agua, el Centro de Investigación y Desarrollo de Ingeniería Ambiental del INTI, and INIDEP

Universal Declaration of Human Rights

International Covenant on Economic, Social and Cultural Rights

Convention on the Rights of the Child

McGinn, AP, *Why Poison Ourselves? A Precautionary Approach to Synthetic Chemicals*, World Watch Paper 153, November 2000.

www.usgbc.org/Docs/LEED_tsac/PVC/CMPBS%20Rebuttal%20Attach%20%20Worldwatch.pdf

CAO Audit of IFC's and MIGA's Due Diligence for two Pulp Mills in Uruguay Final Report

<http://www.cao-ombudsman.org/html-english/documents/CAOInformeFinaldeAudiatoriadelaDiligenciaDebidaCFIOMGISPANISH.pdf>